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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,429	07/10/2003	Joe Dvoracek	Dvorac.J-8	3230

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,429

Applicant(s)

DVORACEK, JOE

Examiner

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) in view of Kulp et al (US 5,749,673).**

Regarding claim 1, Brown discloses an apparatus comprising: an upright stand terminating at an upper end thereof, with an integral frame defining an aperture; the frame and the upper end of the upright stand joined at a crotch; and, a tie-on terminal extending from the crotch, upwardly into the aperture, all illustrated in Figs. 1 and 2. Brown fails to disclose the tie-on terminal in the form of a mushroom. Kulp teaches a safety delineator having a tie-on in the form of a mushroom, seen as knob portion (30), used primarily to prevent a user's hand from slipping off of the end of the shaft (28) (Col 4, lines 10-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tie-on terminal of Brown to be in the form of a mushroom as taught by Kulp, since although Brown's frame appears to already provide a handle means, a mushroom-shaped terminal provides an additional or alternate gripping means as noted by Kulp in that its use is primarily to prevent a user's hand from slipping off of the end of the shaft (28) (Col 4, lines 10-11).

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Regarding claim 2, Brown illustrates the upright stand as generally cylindrical in Figs. 1 and 2, since each section is a cylinder

Regarding claim 3, Brown illustrates the upright stand as generally cone shaped since the bottom section is widest and narrows as you go upward.

Regarding claim 5, Brown illustrates in Fig. 1 the upright stand comprising plural contiguous, coaxial, sections including a base section, a center section joined to the base section at an inwardly directed annular step, and an upper section joined to the center section at an outwardly directed annular step, when viewing any three sections in the channelizer of Brown.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) and Kulp et al (US 5,749,673) as applied to claim 1 above, and further in view of Bent et al (D412,131). The combination of Brown and Kulp fails to disclose the stand as generally rectangular and upwardly tapered. Bent teaches an ornamental design for a traffic channelizing system as shown in the figures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the traffic channelizer of Brown to be rectangular as taught by Bent, since both are shapes ideal for traffic channelizers and provide a different ornamental look to the channelizer.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (D406,543) and Kulp et al (US 5,749,673) as applied to claim 3 above, and further in view of Kulp et al (US 5,560,732). The combination of Brown and Kulp '673 fails to disclose the stand comprising two contiguous, coaxial sections including a central section, and joined to the central section at an

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outwardly directed annular step, an upper section. Kulp '732 teaches this embodiment, shown in Figs. 1 and 2, with the outwardly directed annular step near the top of the channelizer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Brown to have the configuration of having two contiguous, coaxial sections including a central section, and joined to the central section at an outwardly directed annular step, an upper section, as taught by Kulp '732, since such a modification alters the ornamental design of the delimiter without straying from the desired purpose and function of the apparatus.

Response to Arguments

5. Applicant's arguments filed 5/26/04 have been fully considered but they are not persuasive. Applicant argues that Brown (D406,543) did not consider the combination of his frame with a mushroom shaped tie-on terminal within. Brown discloses a frame without the mushroom-shape tie-on terminal, and the Examiner combined Brown with Kulp's teaching of the mushroom shaped terminal, though Kulp lacks the frame. In Brown, it appears the frame is used as a handle means, as discussed in Brown's '600 patent. In Kulp '673, there is no frame, but a knob is used to prevent a user's hand from slipping off the end of the shaft (28) (Col 4, lines 10-11). The Examiner finds motivation in Kulp '673 to modify Brown's tie-on terminal to be mushroom shaped, since Kulp teaches utilizing the tie-on terminal as an gripping surface for a user. True, the handle of Brown also provides this use, but the tie-on terminal can provide an additional

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grasping surface, which Kulp points out; and modifying the tie-on terminal of Brown to be mushroom-shaped as taught by Brown prevents the user's hand from slipping off of the end of the shaft, as noted by Kulp in column 4, lines 10-11. Therein lies the motivation to modify Brown's tie-on terminal to the mushroom shape of Kulp.

Conclusion

6. Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
8/16/04